IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:09-CR-351-BO-1

UNITED STATES OF AMERICA,   )
)
)
v.   )   **O R D E R**
)
DAMIEN LENNOX CHARLES,   )
                   Defendant.   )
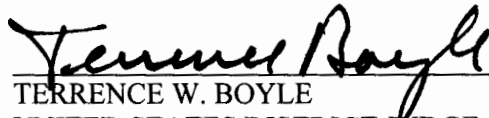
This matter comes before the Court on defendant's motions to alter or amend judgment

pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. [DE 28, 29, 30]. Notice is hereby

given to the petitioner, Damien Charles, that the Court intends to construe his motions as a

motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255. In his motions,

Mr. Charles requests appointment of counsel to handle a matter he alleges arises from the

Supreme Court's holding in *Alleyne v. United States*, 133 S. Ct. 2151 (2013). Such a claim

attacks his original sentence or conviction and therefore is properly brought as a claim pursuant

to § 2255. A movant under § 2255 is not automatically entitled to counsel. *United States v. Dean*,

933 F.2d 1002, 1991 WL 84043, *5 (4th Cir. May 22, 1991) (unpublished) Accordingly, the

Court declines to appoint counsel for Mr. Charles at this time.

The Court GRANTS Mr. Charles 30 (thirty) days from the filing of this notice to confirm

or deny his intent to file a motion pursuant to 28 U.S.C. § 2255. If a response is not filed within

this time, this Court will presume that petitioner is not seeking such relief and this action will be

dismissed. Should petitioner notify this Court of his intention to file a motion to vacate, set aside,

or corr3ect sentence pursuant to § 2255, the Clerk of Court is DIRECTED to provide petitioner

with the appropriate forms on which to file such a motion.

The Court further warns petitioner of the effects of filing a motion pursuant to section 2255 and advises him as to the requirements of section 2255. *See Castro v. United States*, 540 U.S. 375, 377, 383 (2003); *see also United States v. Emmanuel*, 288 F.3d 644, 649 (4th Cir. 2002).

SO ORDERED, this __3__ day of February, 2015.

TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

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